

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

SARAH E. CUMMINGS, on behalf of  
herself and all others similarly situated,  
Plaintiff

v.

Docket No. 1:12-cv-93

TEACHERS INSURANCE AND ANNUITY  
ASSOCIATION OF AMERICA – COLLEGE  
RETIREMENT AND EQUITIES FUND  
(TIAA-CREF), COLLEGE RETIREMENT  
AND EQUITIES FUND (CREF), TEACHERS'  
INSURANCE AND ANNUITY ASSOCIATION  
OF AMERICA (TIAA), TIAA-CREF  
INVESTMENT MANAGEMENT, LLC (TCIM),  
TEACHERS ADVISORS, INC. (TAI), and  
TIAA-CREF INDIVIDUAL & INSTITUTIONAL  
SERVICES, LLC,  
Defendants

PLAINTIFF'S MOTION TO FILE THIRD AMENDED COMPLAINT

Plaintiff Sarah E. Cummings, by her attorneys, Gravel & Shea PC and Kozyak Tropin & Throckmorton, P.A., moves under F.R.Civ.P. 15(a)(2) to file the Third Amended Complaint, attached as Ex. 1. A red-lined version is also attached. *See* Ex. 2. The Third Amended Complaint adds no new claims or legal theories. It drops the state law claims this Court earlier dismissed and adds factual allegations further supporting Plaintiff's claim that Defendants placed their own interests ahead of hers in violation of the fiduciary duty and prohibited transaction provisions of ERISA. The Third Amended Complaint also adds factual allegations supporting Plaintiff's claim that all Defendants should be treated as a single entity.

Rule 15(a)(2) states that leave to amend should be freely granted when justice so requires. The Second Circuit “allow[s] a party to amend its pleadings in the absence of a showing by the nonmovant of prejudice or bad faith.” *Black v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir. 1993). There is no possible prejudice to Defendants here, because Plaintiff is merely adding factual allegations based on evidence obtained in the prior case or publicly available. She is doing so in good faith. Defendants will not be prejudiced, in light of the fact that discovery is ongoing and no trial date has been scheduled. Delay by itself is not sufficient to warrant denial of a motion to amend. *See Rachman Bag Co. v. Liberty Mut. Ins. Co.*, 46 F.3d 230, 234-35 (2d Cir. 1995).

In accordance with Local Rule 7(a)(7), Plaintiff’s counsel certifies that he made a good faith attempt to obtain Defendants’ agreement to this motion. Defendants oppose the motion.

Dated: Burlington, Vermont  
August 24, 2015

/s/ Norman Williams

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